

Assembly Bill No. 1751

Passed the Assembly August 25, 2014

Chief Clerk of the Assembly

Passed the Senate August 21, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1771.8 of the Health and Safety Code, relating to continuing care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1751, Bloom. Continuing care retirement communities.

(1) Existing law provides for the regulation by the State Department of Social Services of activities relating to continuing care contracts that govern care provided to an elderly resident in a continuing care retirement community for the duration of the resident's life or a term in excess of one year. Existing law declares the Legislature's finding that the residents of continuing care retirement communities have a unique and valuable perspective on the operations of, and services provided in, the community in which they live and should have input into decisions made by the provider.

Existing law requires every continuing care retirement community provider to make available to the resident association or its governing body, or if neither exists, to a committee of residents, a financial statement of activities for that facility comparing actual costs to budgeted costs broken down by expense category, not less than semiannually. Existing law also requires a provider to provide a copy of the annual report at a central and conspicuous location in the community. Under existing law, an entity that issues, delivers, or publishes, or as manager or officer or in any other administrative capacity, assists in the issuance, delivery, or publication of, any printed matter, oral representation, or advertising material that does not comply with the requirements of the law relating to continuing care contracts is guilty of a misdemeanor.

This bill would instead require the financial statement to be provided not less than quarterly, and would require it to include a written explanation of all significant budget variances. This bill would additionally require a provider to make a copy of the annual report available on its Internet Web site. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires the governing body of a provider that is not part of a multifacility organization with more than one continuing care retirement community in the state to accept at least one resident of the continuing care retirement community it operates to participate as a nonvoting resident representative to the governing body. Existing law requires the governing body of a multifacility organization to either have at least one nonvoting resident representative to the provider's governing body for each California-based continuing care retirement community the provider operates or to have a resident-elected committee composed of representatives of the residents of each California-based continuing care retirement community that the provider operates select or nominate at least one nonvoting resident representative to the provider's governing body for every 3 California-based continuing care retirement communities, or fraction thereof, that the provider operates.

This bill would additionally require the governing body of all providers to accept at least one resident, or 2 residents for a governing body with 21 or more members, from the continuing care retirement community or communities it operates to participate as voting members of the provider's governing body, and would make other technical and conforming changes. The bill would require a resident member to be nominated to participate on the provider's governing body by the resident association or, if a resident association does not exist, a committee of residents, and would authorize the resident association or committee of residents to nominate multiple nominees from which the provider's governing body may approve a resident member. If the governing body disapproves of the resident association's nominations, the bill would require the resident association or committee of residents to nominate additional resident members until the vacancy is filled. This bill would authorize a provider that has at least one continuing care retirement community in the state and does not have a governing body within the state to, in lieu of appointing a resident to be a voting member of its governing body, appoint a select committee of its governing body members to meet with the resident association or a resident elected committee of residents, as specified, no less frequently than at a reasonable period prior to any regularly scheduled meeting of the governing body at each of its facilities in the state to address concerns of the residents and to

ensure that the opinions of residents are relayed to all governing body members of the provider. The bill would also provide for alternative representation options for a provider that is a sole proprietorship, general partnership, limited partnership, limited liability company, or a closely held corporation in lieu of appointing a resident as a voting member of the provider's governing body, as specified.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1771.8 of the Health and Safety Code is amended to read:

1771.8. (a) The Legislature finds and declares all of the following:

(1) The residents of continuing care retirement communities have a unique and valuable perspective on the operations of, and services provided in, the community in which they live.

(2) Resident input into decisions made by the provider is an important factor in creating an environment of cooperation, reducing conflict, and ensuring timely response and resolution to issues that may arise.

(3) Continuing care retirement communities are strengthened when residents know that their views are heard and respected.

(b) The Legislature encourages continuing care retirement communities to exceed the minimum resident participation requirements established by this section by, among other things, the following:

(1) Encouraging residents to form a resident association, and assisting the residents, the resident association, and its governing body to keep informed about the operation of the continuing care retirement community.

(2) Encouraging residents of a continuing care retirement community or their elected representatives to select residents to participate as members of the governing body of the provider.

(3) Quickly and fairly resolving any dispute, claim, or grievance arising between a resident and the continuing care retirement community.

(c) The governing body of a provider, or the designated representative of the provider, shall hold, at a minimum, semiannual meetings with the residents of the continuing care retirement community, or the resident association or its governing body, for the purpose of the free discussion of subjects including, but not limited to, income, expenditures, and financial trends and issues as they apply to the continuing care retirement community and proposed changes in policies, programs, and services. This section does not preclude a provider from taking action or making a decision at any time, without regard to the meetings required under this subdivision.

(d) At least 30 days prior to the implementation of an increase in the monthly care fee, the designated representative of the provider shall convene a meeting, to which all residents shall be invited, for the purpose of discussing the reasons for the increase, the basis for determining the amount of the increase, and the data used for calculating the increase. This meeting may coincide with the semiannual meetings required in subdivision (c). At least 14 days prior to the meeting to discuss an increase in the monthly care fee, the provider shall make available to each resident or resident household comparative data showing the budget for the upcoming year, the current year's budget, and actual and projected expenses for the current year, and a copy shall be posted in a conspicuous location at each facility.

(e) The governing body of a provider or the designated representative of the provider shall provide residents with at least 14 days' advance notice of each meeting provided for in subdivisions (c) and (d), and shall permit residents attending the meeting to present issues orally and in writing. The governing body of a provider or the designated representative of the provider shall post the notice of, and the agenda for, the meeting in a conspicuous place in the continuing care retirement community at least 14 days prior to the meeting. The governing body of a provider or the designated representative of the provider shall make available to residents of the continuing care retirement community upon request the agenda and accompanying materials at least seven days prior to the meeting.

(f) A provider shall make available to the resident association or its governing body, or if neither exists, to a committee of residents, a financial statement of activities for that facility comparing actual costs to budgeted costs broken down by expense category, not less than quarterly, with a written explanation of all significant budget variances, and shall consult with the resident association or its governing body, or, if neither exists, with a committee of residents, during the annual budget planning process. The effectiveness of consultations during the annual budget planning process shall be evaluated at a minimum every two years by the continuing care retirement community administration. The evaluation, including any policies adopted relating to cooperation with residents, shall be made available to the resident association or its governing body, or, if neither exists, to a committee of residents at least 14 days prior to the next semiannual meeting of residents and the provider's governing body provided for in subdivision (c), and a copy of the evaluation shall be posted in a conspicuous location at each facility.

(g) A provider shall, within 10 days after the annual report required pursuant to Section 1790 is submitted to the department, provide, at a central and conspicuous location in the community and in a conspicuous location on the provider's Internet Web site, a copy of the annual report, including the multifacility statement of activities and a copy of the annual audited financial statement, but excluding personal confidential information.

(h) A provider shall maintain, as public information, available upon request to residents, prospective residents, and the public, minutes of the meetings held by the provider's governing body and shall retain these records for at least three years from the date the records were filed or issued.

(i) Except as provided in subdivision (s), the governing body of a provider that is not part of a multifacility organization with more than one continuing care retirement community in the state shall accept both of the following:

(1) At least one resident of the continuing care retirement community it operates to participate as a nonvoting resident representative to the provider's governing body.

(2) At least one resident, or two residents for a governing body with 21 or more members, of the continuing care retirement community it operates to participate as a voting member of the

provider's governing body. A provider's governing body shall not be required to meet the requirements of this paragraph until there is a vacancy on the provider's governing body or upon the next regularly scheduled selection of the provider's governing body occurring on or after January 1, 2015. A resident member shall perform his or her duties in a manner that complies with the standards of conduct and fiduciary duties of all other members of the governing board.

(j) Except as provided in subdivision (s), in a multifacility organization having more than one continuing care retirement community in the state, the governing body of the multifacility organization shall do both of the following:

(1) Elect either to have at least one nonvoting resident representative to the provider's governing body for each California-based continuing care retirement community the provider operates or to have a resident-elected committee composed of representatives of the residents of each California-based continuing care retirement community that the provider operates select or nominate at least one nonvoting resident representative to the provider's governing body for every three California-based continuing care retirement communities, or fraction thereof, that the provider operates. If a multifacility organization elects to have one representative for every three communities that the provider operates, the provider shall provide to the president of the residents association of each of the communities that do not have a resident representative the same notice of meetings, packets, minutes, and other materials as the resident representative. At the reasonable discretion of the provider, information related to litigation, personnel, competitive advantage, or confidential information that is not appropriate to disclose, may be withheld.

(2) (A) Elect to have at least one resident, or two residents for a governing body with 21 or more members, from any of the continuing care retirement communities it operates to participate as voting members of the provider's governing body. A provider's governing body shall not be required to meet the requirements of this subparagraph until there is a vacancy on the provider's governing body or upon the next regularly scheduled selection of the provider's governing body occurring on or after January 1, 2015. A resident member shall perform his or her duties in a

manner that complies with the standards of conduct and fiduciary duties of all other members of the governing board.

(B) If there are communities that do not have a resident from the community as a voting member of the provider's governing body, the provider shall provide to the president of the resident association of each of those communities the same notice of meetings, packets, minutes, and other materials as the resident voting members. At the reasonable discretion of the provider, information related to litigation, personnel, competitive advantage, or confidential information that is not appropriate to disclose may be withheld.

(k) In order to encourage innovative and alternative models of resident involvement, residents selected pursuant to paragraph (1) of subdivision (i) or paragraph (1) of subdivision (j) to participate as a resident representative to the provider's governing body may, at the option of the resident association, be selected in any one of the following ways:

(1) By a majority vote of the resident association of a provider or by a majority vote of a resident-elected committee of residents of a multifacility organization.

(2) If no resident association exists, any resident may organize a meeting of the majority of the residents of the continuing care retirement community to select or nominate residents to represent them on the governing body.

(3) Any other method designated by the resident association.

(l) A resident member of the provider's governing body selected pursuant to paragraph (2) of subdivision (i) or paragraph (2) of subdivision (j) shall be nominated to participate on the provider's governing body by the resident association or, if a resident association does not exist, a committee of residents. The resident association or committee of residents may nominate multiple nominees from which the provider's governing body may approve a resident member. If the governing body disapproves of the resident association's nominations, the resident association or the committee of residents shall nominate additional resident members for the governing body's approval or disapproval until the vacancy is filled.

(m) The resident association, organizing resident, or, in the case of a multifacility organization, the resident-elected committee of residents, shall give residents of the continuing care retirement

community at least 30 days' advance notice of the meeting to select a resident representative and resident members of the governing body and shall post the notice in a conspicuous place at the continuing care retirement community.

(n) (1) Except as provided in subdivision (o), resident representatives shall receive the same notice of meetings, packets, minutes, and other materials as members of the provider's governing body and shall be permitted to attend, speak, and participate in all meetings of the governing body.

(2) Resident representatives may share information from meetings with other residents, unless the information is confidential or doing so would violate fiduciary duties to the provider. A resident representative shall be permitted to attend meetings of the governing body committee or committees that review the annual budget of the facility or facilities and recommend increases in monthly care fees. The resident representative shall receive the same notice of meetings, information, packets, minutes, and other materials as committee members, and shall be permitted to attend, speak, and participate in the committee meetings. Resident representatives shall perform their duties in good faith and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(o) Notwithstanding subdivision (n), the provider's governing body may exclude resident representatives from its executive sessions and from receiving meeting materials to be discussed during executive session. However, resident representatives shall be included in executive sessions and shall receive all meeting materials to be discussed during executive sessions related to discussions of the annual budgets, increases in monthly care fees, indebtedness, and expansion of new and existing continuing care retirement communities.

(p) The provider shall pay all reasonable travel costs for resident representatives and resident members of the governing body.

(q) The provider shall disclose in writing the extent of resident involvement with the governing body to prospective residents.

(r) A provider is not prohibited from exceeding the minimum resident participation requirements of this section by, for example, having more resident meetings, more resident representatives or resident members of the governing body to the provider's governing body than required, or by having one or more residents

on the provider's governing body who are selected with the active involvement of residents.

(s) (1) If a provider having at least one continuing care retirement community in the state does not have a governing body within the state, the provider shall, in lieu of appointing a voting member pursuant to subdivision (i) or (j), appoint a select committee of its governing body members to meet pursuant to paragraph (6) of subdivision (a) of Section 307 of the Corporations Code, or in a location that has been designated in the notice of the meeting, with the resident association or a resident-elected committee of residents no less frequently than a reasonable period prior to any regularly scheduled meeting of the governing body at each of its facilities in the state to address concerns of the residents and to ensure that the opinions of the residents are relayed to all governing body members of the provider.

(2) (A) For a provider that is a sole proprietorship, general partnership, limited partnership, limited liability company, or a closely held corporation, the provider may, in lieu of appointing a voting member pursuant to paragraph (2) of subdivision (i) or paragraph (2) of subdivision (j), appoint a select committee of its members to, or, if it is a sole proprietorship, the sole proprietor shall, meet in a location that has been designated in the notice of the meeting with the resident association or a resident-elected committee of residents at each of its facilities semiannually and at least 60 days prior to any financial or administrative changes, including, but not limited to, any proposed increase in monthly fees, indebtedness of the provider, expansion or contraction of the community facility, or other changes that would result in a budget variance, or any policies, programs, or services that would materially change the operation or environment of the community, to address concerns of the residents and to ensure that the opinions of the residents are relayed to all members of the provider.

(B) If any member of a limited liability company is a corporation, a nonvoting resident representative elected pursuant to paragraph (1) of subdivision (i) or paragraph (1) of subdivision (j) shall be invited to the meetings of the governing body of that corporation that address any of the proposed changes specified in subparagraph (A) and shall be permitted to address those proposed changes. The governing body of the corporation shall provide the nonvoting resident representative with at least 30 days' advance

notice of the meeting. If more than one member of the limited liability company is a corporation, only the corporation with the largest interest in the limited liability company shall comply with this subparagraph.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2014

Governor